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CURRENT DEVELOPMENTS

‘Vetoing’ the admission of a third state in international organizations

Lessons learned from the Greece-fYROM case

CHRISTOS KYPRAIOS — 29 June, 2018

On the 17thJune, ‘the former Yugoslav Republic of Macedonia’ (hereinafter: ‘fYROM’) and Greece signed an Agreement to resolve their 27-year-long dispute over the former’s name. Most importantly, fYROM committed to change its constitutional name from ‘Republic of Macedonia’ to ‘Republic of North Macedonia’ for both domestic and international purposes. The bizarre dispute (and the Agreement itself) has raised interesting legal questions, serving asthe most prominent case of an inter-state battle over the choice of names and symbols of statehood and over identity.

Furthermore, it offers an example of an issue that has attracted limited attention in scholarship, i.e. the blocking of a country's accession to international organizations by another state-member of the latter, for reasons that openly or covertly concern a bilateral dispute between them that is unrelated to the statutory functions of the organization involved.

In the present contribution I will share some general thoughts on the matter, before discussing it against the backdrop of the dispute between the two Balkan states and their recent Agreement.

'Vetoing' the accession of third states to IOs: The international law perspective

Whether a state can block the accession of another country to an international organization is to be determined by looking at the constitutive treaty of the organization at hand. The constitutional provisions on voting arrangements differ across organizations (providing for majority voting, weighted voting, consensus or unanimity), but also potentially within the statute of the same organization depending on which matter is to be decided. When it comes to the accession of new members, decision-making is in most cases governed by the rule of unanimity. This applies as regards both the EU (Art. 49 TEU; Art. 218 TFEU) and NATO (Art. 10 North Atlantic Treaty). In those cases, we can speak of a 'veto' power in the wider sense conferred on each member state, given that it is able to prevent a decision about the accession of a new member state from being taken.

Such*prima facie*lawful 'veto' power becomes complex in view of how it has been exercised by some states in practice. Indeed, we have observed the threat and use of 'veto' being instrumentalized by several countries as a negotiating tool in their disputes with other states which aspire to join organizations in which the

former are members. By illustration, this was seen in the Slovene-Croatian context, where Slovenia was for a long time blocking Croatia's EU accession negotiations because of their disputed border in the Gulf of Piran. As the statutes of international organizations are international treaties that fall under the remit of the 1969 Vienna Convention, such an abusive use of 'vetoing' rights hardly complies with the obligation of states to perform the treaties to which they are parties in good faith (Article 26 VCLT).

Operationalization of 'veto' in the Greek-fYROM naming dispute

Ever since it gained its independence in 1991, the integration of fYROM into international structures – mainly the UN, and later on the EU and NATO – was a declaredobjective of multiple actors. The new Republic, European states and the US, as well as the EU and NATO, considered it as an important step in order to achieve stability, peace and prosperity in the Balkans. Although Greece itself professed to share this view,in the course of the bilateral dispute over the name, the threat – and eventual use – of 'veto' over fYROM's entry to the EU and NATO emerged as the primary negotiating tool on the Greek side.

Between 1991-1995, the Greek strategy was to raise strong objections to the international recognition of its northern neighbour by other states and by the European Communities (which resulted in the delayed recognition of the latter compared to that of the other five former Yugoslav Republics), to halt its admission to the UN under its constitutional name (it was admitted only in 1993 under the provisional appellation 'the fYROM'), and to impose a trade embargo.

In September 1995, though, the two countries signed an Interim Accord under which Greece *inter alia*assumed an obligation 'not

to objectto the application by or the membership of' its neighbour in international organizations of which Greece was a member, provided that this application (or membership) had been made under the designation 'fYROM' (Art. 11 para 1). Indeed, until 2008 Greece complied with this obligation, not posing any objections to such applications or memberships of 'fYROM'. During the same period, however, the latter successfully pursued its international recognition and reference under its constitutional name 'Republic of Macedonia' (some 120 state recognitions by 2008, 140 as of today). In view of these developments, Greece saw its ability to thwart its neighbour's NATO and EU accession as its last and sole chance to prevent the *de facto*and definite solution of the naming dispute to its disfavour, despite the fact that such a 'right to object' on its part had been circumscribed by the obligations that it had accepted under the 1995 Interim Accord.

In 2008 Greece made actual use of its 'veto' powers, blocking the extension of an accession invitation to its Balkan neighbour byNATO and the opening of its accession negotiations with the EU, despite the fact that the latterhad agreed to the reference 'fYROM' for application purposes. In the framework of both organizations, Athens successfully introduced 'a mutually acceptable solution to the name issue' as a benchmark against which the bids of fYROM were to be assessed.

Notably, the 2008 Greek 'veto' to fYROM's NATO membership bid resulted in a case against Greece before the ICJ, with the Court finding in its 2011 Judgement that by objecting the extension of an invitation to fYROM, Greece had breached its obligation under the 1995 Interim Accord. Interestingly, the Court refused to order fYROM's Greece to refrain from similar actions in the future, stating that '[a]s a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since*its good faith must be presumed*' (para. 168). Nevertheless, even after that

point in time the Greek position remained largely unchanged, insisting in the prior resolution of the naming issue before consenting to the initiation of the accession processes of fYROM vis-à-vis both NATO and the EU.

The 2018 deal: Vindication of a wrongful and bad faith practice

The matter is treated in Article 2 of this June's Agreement, where Greece'agrees not to object to the application by or the membership of' its co-signatory in international, multilateral and regional organizations and institutions*under its newly agreed name*(Republic of North Macedonia). On its part, fYROM commits toseek admission to those entities *under that same name*. The second requirement applies explicitly with particular regard to fYROM's application and eventual accession to the EU and NATO (Art. 2(4)(a)).

Interestingly, although under Art. 20 the entry into force of most of the provisions of the Agreement is conditioned on the completion of multi-phased internal legal procedures by both parties (as regards fYROM, these include *inter alia*a possible referendum and a constitutional amendment, see Art. 1), Greece assumes a prompt obligation*upon receiving the notice of the ratification* of the Agreement byfYROM's parliament to notify the President of the Council of the EU and the Secretary General of NATO that it supports the *opening*of accession negotiations of 'North Macedonia'. Nevertheless, the continuation of such a support is conditional, first, on a positive outcome of the referendum (if one is ever held in fYROM) and, subsequently, on the successful completion of the constitutional amendments envisaged in Art. 1. Lastly, it is provided that Greece will ratify 'North Macedonia's' eventual NATO Accession Protocol only *uponreceipt of notification*by its co-signatory *concerning the completion of all its internal legal procedures*for the entry into force of the Agreement (again, these include a possible

referendum *with an outcome consistent with the Agreement*and the successful conclusion of the constitutional amendments), while the ratification of the Protocol will be concluded together with that of the Agreement (Art. 2(4)(b)(ii)).

In sum, the beginning and fortunate completion of fYROM's accession processes regarding NATO, the EU and other international organizations is now officially dependent on a favourable solution of the naming dispute for Greece, as any moderate observer understands the renaming of fYROM to 'North Macedonia' as such. That is, the Agreement departs and (if entered into force) frees Greece from its obligations under Article 11(1) of the Interim Accord, and somehow vindicates the post-2008 wrongful and bad faith negotiating policy of successive Greek governments on the naming issue. From this perspective, and albeit exemplary in other respects, this deal can be seen as a bad lesson of how the threat and use of 'veto' is successfully instrumentalised, in negligence of internationally assumed obligations and international law principles.

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